

From Courtship To Courthouse: The Perils of Workplace Romance

By Geoffrey M. Boodell

Romance at work is certainly nothing new, nor are many of the problems that often go with it. With Americans spending more and more time at work, it is hardly surprising that many employees find themselves involved in romantic relationships with their co-workers. Some recent surveys indicate that approximately 59 percent of employees have had a romantic relationship with a co-worker and that one-third of all romantic involvements started in the workplace.

So, what does this mean for you, the employer? In a word — headaches. Romances between employees, especially between a supervisor and a subordinate, raise a myriad of problems for the employer of both the legal and non-legal variety. Even relationships between co-workers that are entirely consensual can create substantial risks for an employer. By some counts, 50 percent of sexual harassment lawsuits arise out of workplace relationships that began as consensual. Workplace romances frequently lead to disruption, distraction and perceptions for favoritism. In extreme circumstances, they can breed workplace violence. They can also wend their way from courtship to court because workplace romances contain the ingredients for embroiling an employer in sexual harassment litigation.

Of course, the proper response to workplace romances depends upon the circumstances of the individual relationship. Generally speaking, there are three broad categories of workplace romances and each call for a somewhat different approach. These categories are:

- ◆ Romance between a supervisor and his or her direct report
- ◆ Romance between a supervisor and a subordinate who does not report directly to that supervisor
- ◆ Romance between co-workers

Even within these categories, the facts and circumstances of each situation will be unique and the response should be adjusted accordingly.

Romance Between a Supervisor and A Direct Report

The most troublesome workplace romances arise between a supervisor and an employee who directly reports to the supervisor. The problem with these relationships stems from the disparity of power and authority between the individuals and sets the stage for a potential claim of quid pro quo sexual harassment. Quid pro quo harassment occurs when employment decisions or expectations (*e.g. hiring decisions, promotions, salary increases, shift or work assignments, discipline or termination decisions, performance expectations*) are based on an employee's willingness to grant or refuse sexual favors. When the relationship goes sour and the subordinate employee suffers an adverse employment action, the jilted employee may claim that his or her job advancement or continued employment was contingent on continuation of the sexual relationship. Such relationships pose a serious risk to the organization because the company will be held **strictly liable** if quid pro quo sexual harassment is substantiated.

Romance Between A Supervisor and An Employee Not in A Reporting Relationship

Although not as problematic as a romance between employees in a direct reporting relationship, a romance between a supervisor and a subordinate employee not in a reporting relationship also holds numerous possibilities for trouble. The supervisor may have the ability to influence employment decisions about the employee, which may give rise to an allegation of quid pro quo harassment. The employee may also claim that behavior of the supervisor was unwelcome, giving rise to a claim of hostile work environment sexual harassment. Because of these concerns, many organizations have policies that require employees to report these relationships in a confidential manner so that the company can monitor the relationship to ensure the relationship is consensual and remind the employees of their duties and obligations under the company's anti-harassment and discrimination policies.

Romance Between Co-Workers

Relationships between co-workers are less likely to create legal complications for companies so long as the employees conduct themselves appropriately at work. The key is to focus on the employees' conduct at work and take immediate and prudent action if it becomes inappropriate and unprofessional. Keep in mind that these romances can also create complications and disruptions in the workplace when they break up. Employers should therefore remind employees of the company's sexual harassment policy and document these communications.

What Should Employers Do About Cupid's Arrows?

At a minimum, employers should have a policy that prohibits relationships between supervisors and their direct reports because they expose the organization to potential liability and are fraught with danger. Employers must address these kinds of romances in a clear policy that requires disclosure of any such relationship and makes clear that the company strongly discourages these relationships and will take steps to address the situation. Some employers are now going a step further and implementing policies that restrict, prohibit or monitor all office romances. Whether this approach is right for your organization depends on the culture of your company and the composition of your workplace. Although these policies are legal in Washington, employers should have employment counsel review such policies to ensure they do not run afoul of laws relating to marital status discrimination and employee privacy.

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